

**Draft MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, June 17, 2014  
**Time:** 6:00 PM Closed Session / 7:00 PM Open  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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**CALL TO ORDER**

Mayor Esteves called the meeting to order at 6:00 PM. The City Clerk noted the roll.

**PRESENT:** Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano and Montano

**ABSENT:** Councilmember Gomez was absent at roll call. He arrived for the Closed Session at 6:14 PM.

**CLOSED SESSION**

City Council convened in Closed Session to discuss litigation and labor negotiations.

City Council then convened in Open Session at 7:02 PM.

**ANNOUNCEMENT**

None out of Closed Session.

**PLEDGE**

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

**MEETING MINUTES**

Motion: to approve the minutes of the June 3, 2014 City Council meeting

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**SCHEDULE OF MEETINGS**

Motion: to approve Council Calendars/Schedule of Meetings for June and July 2014

Councilmember Giordano noted there were no Council meetings scheduled in July.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**PRESENTATION**

Mayor Esteves presented the following:

- Proclaimed June 21, 2014 as *Iglesia Ni Cristo Day* in Milpitas, upon the church's 100 years as a congregation
- Proclaimed July 2014 as "*Parks and Recreation Month*" in the City of Milpitas
- Commended student Alexa Cacao, outstanding diver and Milpitas High graduate
- Commended student Sabrina Pham, Milpitas High graduate and recycler
- Recognized a student from Belgium - Corentin Demoitie, a Rotary International Youth Exchange Program participant at Milpitas High School during the past school year

**PUBLIC FORUM**

**Bill Ferguson**, Milpitas resident, attended a meeting last week of representatives of both the School Board and the City Council. He felt the City and School District had the same interests, in terms of the need for a new school and the constituents were the same. He encouraged an agreement be reached between the two governments.

**Patti Joki**, Pleasanton resident and retired Milpitas Fire Marshal, along with Scott Brown and Michael Lopez, also retired from Milpitas Fire Department, addressed the Council about a letter they had received from the City concerning a 1% retiree dependent fund. They described criteria required to participate in this fund, their contributions toward this fund, its depletion and reimbursement for retiree medical costs. The three retirees sought assistance to come to resolution on what the City's letter demanded of them.

Councilmember Gomez asked for Ms. Joki to email the letter to him, which he had not previously received.

**Robert Marini**, Milpitas resident, commented about Councilmembers' pay and benefits. He also referred to notice given to residents about rates and utilities.

## **ANNOUNCEMENTS**

Vice Mayor Polanski reported that she, Mayor Esteves, School Board President Marsha Grilli and Board member Danny Lau met last week on Thursday for a discussion. City Manager Tom Williams and she clarified the distinct government entities, with separate elected officials.

Mayor Esteves announced that a Buddhist Foundation was having a Health Fair at their office on Sunday, June 22 from 9 AM to 3 PM at 175 Dempsey Road in Milpitas.

## **ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

City Attorney Ogaz asked City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. No conflicts or contributions were reported.

## **APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

## **CONSENT CALENDAR**

Motion: to approve the Consent Calendar (items noted with \*asterisk), as amended

Mayor Esteves requested to remove agenda item No. 25 from consent, to approve a lawsuit settlement regarding the former Redevelopment Agency.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

- \* 3. Building Inspectors  
Approved and authorized the developers' requests for employment of three Temporary Building Inspectors.  
Approved a budget appropriation of \$485,727 into the Building and Safety Department's budget for fiscal year 2014-15.
- \* 5. Ordinance No. 164.3  
Waived the second reading and adopted Ordinance No. 164.3 amending the Milpitas Municipal Code relating to the Schedule of Fees and Service Charges.
- \* 6. Resolution  
Adopted Resolution No. 8383 granting final acceptance of the Abel Street Transit Connection Project No. 4260, Federal Aid Project No. CML 5314 (003) and released the contractor's bond.
- \* 7. Resolution  
Adopted Resolution No. 8384 approving Amendment No. 2 to the Agreement with Tecogen, Inc. in the annual not-to-exceed amount of \$15,500 for the term from July 1, 2014 to June 30, 2019 in accordance with Milpitas Municipal Code Section I-2-3.09 (Sole Source Procurement).

- \* 8. Resolution
  - 1. Adopted Resolution No. 8385 annexing real properties located within Final Tract Map No. 10037 and Final Tract Map No. 10281 into Community Facilities District 2008-1.
  - 2. Approved the Subdivision Improvement Agreement between the City of Milpitas and Milpitas Station (San Jose) Venture, LLLP for public improvements associated with Final Tract Map No. 10037 (Milpitas Station Master Map) and Final Tract Map No. 10281 (Milpitas Station Phase 1).
  - 3. Approved the Fee Credit Agreement between the City of Milpitas and Milpitas Station (San Jose) Venture, LLLP for fee credits associated with the TASP park land dedication and S. Milpitas Blvd. Improvements.
  - 4. Approved the Final Tract Map No. 10037 (Milpitas Station Master Map), Final Tract Map No. 10281 (Milpitas Station Phase 1), and Public Improvement Plans 2-1164 and 2-1183 (construction documents for the associated public improvements).
  
- \* 9. Resolution
 

Adopted Resolution No. 8386 granting initial acceptance of public improvements for Robson Homes, Tract 10077, Project No. 2653 and a reduction of the performance bond.
  
- \*10. Resolution
 

Adopted Resolution No. 8387 revising the Interfund Advance or Loan Policy.
  
- \*11. Resolution
 

Adopted Resolution No. 8388 awarding a construction contract to O'Grady Paving, Inc. and authorizing the City Manager to execute the contract for Street Resurfacing 2015, Projects No. 4275 and No. 3412, in the amount of \$3,305,360; and, authorized the Public Works Director to negotiate and execute change orders for the Street Resurfacing 2015 project in the cumulate amount not to exceed \$500,000.
  
- \*12. Resolution
 

Adopted Resolution No. 8389 transferring a total of \$159.89 in unclaimed checks, per the list of checks generated by the City's Finance department, into the General Fund in accordance with Standard Operating Procedure No. 26-1.
  
- \*13. Resolution
 

Adopted Resolution No. 8390 approving Non-Exclusive Collection, Transportation, and Recycling Agreement with Waste Connections of California, Inc. for a three-year term commencing on June 17, 2014 and authorizing the City Manager or designee to extend the agreement for a maximum of two, three-year extensions.
  
- \*14. Resolution
 

Adopted Resolution No. 8391 making sole source findings per Milpitas Municipal Code Section I-2-3.09, approving Amendment No. 3 to the Agreement with Tiburon, Inc. for Software Support and Maintenance for Police Records Management System in the amount of \$55,496 for the term July 1, 2014 to June 30, 2015.

Authorized the City Manager or designee to extend the agreement on an annual basis for up to four additional years with an annual increase of up to 5%, subject to Council appropriation of funds and without further City Council action. Also authorized the City Manager to grant increases according to the agreement without further Council action.
  
- \*15. Burke, Williams amendment
 

Approved Amendment No. 1 to the September 17, 2013 Agreement with Burke, Williams & Sorensen, LLP for outside labor negotiator services.
  
- \*16. Carollo Engineers amendment
 

Approved Amendment No. 1 to the consultant agreement with Carollo Engineers, Inc. to extend the term to June 30, 2015 for the Curtis Well Project No. 7076.
  
- \*17. Amend Agreements with Dispatcher
 

Approved the First Amendment to the consulting agreements with Linda Trudeau and Healani Maloney for public safety dispatching service.
  
- \*18. Otis Elevator Co. amendment
 

Approved Amendment No. 1 to the agreement with Otis Elevator Company for maintenance service on various City of Milpitas elevators for the annual amount not-to-exceed \$30,000 for the period beginning July 1, 2014 and ending on December 6, 2016.
  
- \*19. CSG Amendment
 

Authorized the City Manager to execute Amendment No. 2 to the agreement with CSG for fire inspection and plan review services for a total amount-not-to-exceed \$163,200 for Fiscal Year 2014-15, and extend the agreement to June 30, 2015.

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| *20. Amend Agreement with Santa Clara VTA            | <p>1. Approved Amendment No. 6 to the Master Agreement with Santa Clara Valley Transportation Authority related to the Silicon Valley Rapid Transit Program Berryessa Extension (BART) Project to extend the term to September 30, 2015 and increase the agreement amount by \$1,696,300.</p> <p>2. Approved a budget appropriation of \$650,000 to Project No. 4265-BART extension coordination and planning in the CIP.</p> |
| *21. HMM Engineering Amendment                       | <p>Approved Amendment No. 4 to the Agreement with HMM Engineers to extend the term from June 30, 2014 to June 30, 2017 for the Dixon Landing Road/I-880 Interchange Right of Way project at no additional cost to the City.</p>   |
| *22. Excess Workers' Compensation Insurance          | <p>Authorized the City Manager to pay Brown &amp; Brown of California the premium rate of \$126,878 and approved acceptance of Safety National Casualty Corporation as provider of the City's excess workers' compensation insurance for FY 2014-15.</p>  |
| *23. Authorize Bids                                  | <p>Approved plans and specifications for Project No. 3402, McCarthy Boulevard Landscape &amp; Lighting Improvements, and authorized advertisement for bid proposals.</p>  |
| *24. Agreement with RMC Water and Environment        | <p>Approved an agreement with RMC Water and Environment in the amount of \$900,000 and for a term to February 28, 2017 for the Dempsey Road Water Line Replacement, East Segment Two of the Seismic Waterline "Los Coches Back Bone," Abel Street Pipe Line Extension, and Dempsey Road Storm Drain Replacement, Projects No. 7118, No. 7100, No. 7117 and No. 3709.</p>  |
| *26. Settle Claim Through ABAG PLAN                  | <p>Authorized a claim settlement with claimant Shah through ABAG PLAN for an amount not to exceed \$95,000.</p>   |
| *27. Pay Invoices to Cayenta and Peelle Technologies | <p>Authorized the payment for annual support and maintenance to two vendors: Cayenta (Financial System) in the amount of \$141,448.26 and Peelle Technologies (Document Management) in the amount of \$23,144.00.</p>   |
| *28. Emergency Repair Work                           | <p>Received a report from the Public Works Director of emergency repair of the Milpitas Police/Public Works Building, Project No. 3410, and authorized payment of invoices.</p>   |

## **PUBLIC HEARING**

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| <p><b>1.</b> Citation II Lago Vista apartments and mixed use development project in Transit Area</p> | <p>Senior Planner Scott Ruhland introduced the development in the Transit Area Specific Plan area at 765 Montague Expressway in Milpitas. Mr. Ruhland noted that three specific exceptions to City regulations were requested, via the Conditional Use Permit for the Council's consideration. Displayed overhead were several slides with the layout, map, and design details for the mixed-use project including 381 apartments on Montague Expressway at Piper Drive, across from the new BART station, with multiple features and modern design elements. The City's parking requirements were met in this development proposal, with allowance for some street parking on site, for 634 total parking spaces.</p> <p>Councilmember Montano inquired about the pedestrian bridge and who would pay for it. Staff replied there was funding for its design and the City had been applying for grant funding for its future construction. Ms. Montano wanted information on design review and whether any Commission considered it. City Manager Williams noted that the bridge concept design was already approved by the Planning Commission and the City Council in the past, while staff was working with Santa Clara Valley Transportation Authority (VTA) on grant funding, with a final design to come back to Council.</p> <p>Lastly, Councilmember Montano asked if there was any type of convenience store in the retail portion. Staff replied that was most likely, according to the developer.</p> <p>Vice Mayor Polanski announced she had met with Citation representatives prior to this meeting. She was excited to see some retail in this mixed use project. She asked about</p> |
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utilities underground and crossing underneath Montague, with concern for disruptions with the widening of that road. It was important for residents to know that Montague was not a City street, and some mitigation would be needed when undergrounding was going on during construction.

Councilmember Gomez wanted to know how it was determined who paid for the costs of undergrounding. Staff responded that projects that develop their frontage were responsible for their improvement, so it was the developer's responsibility for the undergrounding needed for this project. Mr. Gomez announced he had met with the applicant. He wondered why the City did not ask VTA to pay toward this needed work partly on their land. Mr. Williams replied further that the in the scope of the project, when the City did not regulate VTA's work, to an extent feasible and cost effective, then VTA was undergrounding. Certain utility lines could be reasonably be undergrounded while some cannot. What the City had land use and aesthetic control over, it did manage those utility placements underground. Mr. Gomez referred to possible sharing of these costs by various entities.

Mayor Esteves asked staff if there was any comment from the Milpitas Unified School District about this project after being notified. Staff replied no. The Mayor noted art pieces were offered by the developer, though it was not a condition of approval. He talked about parking arrangements and discussed some of the tradeoffs for the benefits gained. In future, he did not agree with counting street parking spaces toward the number required in a development proposal and did not want to set a bad precedent.

Mayor Esteves reported that he had met with the developer. He pointed out the planting of Jacaranda trees planned for the project, as accent trees on site, as per those suggested by the City's Community Advisory Commission.

Mr. Ruhland held up a letter of support he received on this date for the Council, from the Santa Clara Housing Action Coalition. Mayor Esteves noted a letter of support for this project had arrived from the Chamber of Commerce, too.

Mayor Esteves asked the applicant if he wished to address the City Council.

Jim Sullivan of SCS Development Company, project developer, was pleased to present the project. He emphasized that parking was negotiated with City staff before going to the Planning Commission, including the location of the trash container, and noted 4 – 6 more parking spaces in garage could be designed, per his architect (due to smaller trash bin). His suggestion was at a couple of key corners could be where the jacarandas might go, and explained where art structures were planned to be installed. Mr. Sullivan highlighted several other features of the proposed development.

Mayor Esteves opened the public hearing for comments.

Robert Marini, Milpitas resident, talked about the water shortage and need to reduce water consumption. The new project meant more people with more water demands and more traffic. Demand for services would increase, as would costs, with no benefit to residents.

Pat Brown, from Newport Beach, represented the Milpitas Station project behind this proposed one, and was very supportive of this project, which met Transit Area Specific Plan goals and objectives.

Voltaire Montemayor, Milpitas resident, supported the project for the improvement of Milpitas. It was a good connection toward the 49ers stadium and would help the mall. It could be a problem for power lines and the undergrounding of utilities.

Rob Means, 1421 Yellowstone resident, said there's a lot to like about this project. The pedestrian overcrossing clearly should be built at the same time as the BART station. Of the more than 600 parking spaces, only four were for electric vehicles. There should be

closer to 1% allocation for electric vehicles, since that that was the trend here in northern California.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

Mr. Sullivan was open to building more EV stations in the future at the project site, and anticipated more than the four in the conditions. Higher density housing around the BART station would help the mall and other businesses in that end of city. Condition No. 68 dealt with undergrounding across Montague Expressway, and that undergrounding of power poles was always in the City's interest. He objected only to cost of the undergrounding, since that was not providing power to the site, only for BART actually. He requested to have someone else do it, if possible. His company SCS would build 50% of units in that area of the TASP and would take on an appropriate part of the costs, but maybe that could be shared with other developers.

Mr. Sullivan referred to a letter on the right-of-way acquisition along Montague Expressway, where VTA was in charge of doing the expansion to four lanes in that area and in past year County has expanded to five lanes. There was ongoing negotiation with the County over land in the project area, he reported.

Vice Mayor Polanski referred to water use, now and in the future at the project site. Reclaimed water would be used for irrigation of landscaping. On undergrounding of utilities, her concern was timing per what the County was doing to widen Montague, and what this developer would build when, and others, so a creative solution was needed on the timing of all the construction activity.

Councilmember Giordano felt that electric wires did not even affect Mr. Sullivan's project, so she asked were there other precedent-setting projects that had a similar burden. City Manager Tom Williams noted there were multiple jurisdictions in the area. Perhaps a Memorandum of Understanding with the County Board of Supervisors regarding some of the needs in this area and perhaps include SCVTA. Beautification objectives could be achieved together. Mr. Williams suggested possibly that Development Impact Fees could be collected for some of the undergrounding costs upfront, and then reimburse those back to developers later for any off-site portion or where there was not a nexus established.

Mayor Esteves responded it was good that the applicant was willing to share costs.

Councilmember Montano agreed that there needed to be better communication when sites were developed. The Transit Plan was approved in 2008, and planning should have been done then about some of the utilities issues. Regarding water use, people were not wasting a lot of water with new devices in modern construction whereas older homes were more likely to waste water. This project had a great design, was very good for families, and built near BART.

Mayor Esteves asked about the timing of construction. Mr. Sullivan identified 2016 as likely time when construction would start on this project; meanwhile his company was already underway building over 300 units just north of this site.

Councilmember Montano believed that students in this development would attend Randall Elementary School, and which was not maxed out, as the closest elementary school.

(2) Motion: to adopt Resolution No. 8382 approving Major Vesting Tentative Map No. MT13-0006, Site Development Permit No. SD13-0012, and Conditional Use Permit No. UP13-0011 for the construction of a mixed-used project including 381 apartment dwelling

units, 8,100 square feet of commercial and office space and associated site improvements located at 765 Montague Expressway for Citation II Lago Vista Apartments and mixed-use development in the Transit Area Specific Plan area

Motion/Second: Councilmember Giordano/Councilmember Gomez

The motion included, as discussed, installation of several jacaranda trees, potentially added electric car charging stations as needed, the art piece, additional parking spaces if possible, and working on a possible Memorandum of Understanding on undergrounding of utilities.

Motion carried by a vote of: AYES: 5  
NOES: 0

## REPORT OF COMMITTEE

### 2. Public Art Committee - Public Art Piece at Cardoza Park

Recreation staff Renee Lorentzen described four finalist art projects submitted for the public art project planned at Cardoza Park in Milpitas. These were considered by the Public Art Committee members. Four 3-D models were created for review, and the PAC voted in March, with “The Kicker Kid” as the very strong standout choice above and beyond the other three proposals. Funding for this art project was approved within the FY 2014-15 City budget.

Councilmember Montano inquired further details about the “Millipede” proposal.

Mayor Esteves asked about required maintenance for the first one (Kicker Kid). Staff responded that some maintenance of the windmills would be needed on the top, which was graffiti treated, so it was minimal maintenance.

Robert Marini, Milpitas resident, commented on the height of the soccer art piece.

Motion: to approve the “Kicker Kid” art piece for the Cardoza Park Art Installation project, per the recommendation of the Milpitas Public Art Committee

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

## NEW BUSINESS

### 4. Social Media Presentation

Recreation staff Renee Lorentzen and Stephanie Douglas presented the new Social Media policy for the City via a guidebook created by a city staff team. Social media would serve as a tool for social and community engagement of residents, businesses and visitors with the City.

Councilmembers inquired about the evaluation of the success of this policy, whether there were any costs, the value of this free tool, helpfulness to Commissions, and review by the Smart Team of employees.

Robert Marini, Milpitas resident, thought a good idea would be social media to tell residents what the costs of services were.

Motion: to note receipt of presentation of the City of Milpitas Social Media Guidebook

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**25. Litigation Settlement in two cases**

City Attorney Michael Ogaz explained to Council that they had an agreement before them for settlement of two major lawsuits. The agreement would resolve and bring closure to disagreements with the State of California and the County of Santa Clara over various issues related to the dissolution of the Milpitas Redevelopment Agency. Mr. Ogaz said the settlement's terms included that the two lawsuits, filed in Sacramento, would be dismissed by all parties and the City would pay \$40,875,908 to the County's auditor-controller for the joint benefit of local taxing entities including the City of Milpitas.

Robert Marini, Milpitas resident, was not clear what the \$40 million was. What did that amount really mean? Mr. Ogaz responded that the City would have to pay that amount, and would then receive part of it back as a taxing entity in the subject area. City Manager Tom Williams further responded it was a retroactive amount that the State and County had been trying to extricate from the City ever since Redevelopment Agency dissolution more than 3.5 years ago.

Rob Means, 1421 Yellowstone, was pleased to see this matter settled, so the City could work out a deal with the School District to get a school built.

Motion: to approve the settlement agreement regarding two lawsuits: County of Santa Clara, et al v. Milpitas Economic Development Corporation, et al. and Successor Agency to the Milpitas Redevelopment Agency, et al v. John Chiang, et al.

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5  
NOES: 0

**ADJOURNMENT**

Mayor/Chair Esteves adjourned the City Council meeting at 9:17 PM.

*Meeting minutes respectfully submitted by  
Mary Lavelle, City Clerk*



**DRAFT MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:**                   **Special Joint Meeting of the Successor Agency of  
the former Redevelopment Agency, the  
Economic Development Corporation and the  
Housing Authority Commission**

**Date:**                       **Thursday, June 19, 2014**

**Time:**                      **3:30 PM**

**Location:**               **Milpitas City Hall, Building Conference Room  
455 East Calaveras Blvd., Milpitas**

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**ROLL CALL**

Mayor/Chair Esteves called the meeting to order at 3:35 PM.

**PRESENT:** Mayor/Chair Esteves, Vice Mayor/Vice Chair Polanski, and  
Councilmember Gomez

**ABSENT:** Councilmember Giordano. Councilmember Montano was absent at  
roll call and arrived at 3:39 PM.

**APPROVAL OF AGENDA**

Motion: to approve the agenda

Motion/Second:       Vice Mayor Polanski/Councilmember Gomez

Motion carried by a vote of:                   AYES: 3  
  NOES: 0  
  ABSENT: 2 (Giordano, Montano)

**PUBLIC FORUM**

None.

**ANNOUNCEMENT OF  
CONFLICT OF INTEREST**

None.

**AGREEMENT**

City Attorney Mike Ogaz expressed the need for the three entities to approve the  
settlement agreement regarding lawsuits.

Motion: to approve and ratify the settlement agreement between the parties to  
two lawsuits: County of Santa Clara, et alia versus the Milpitas Economic  
Development Corporation, et alia and Successor Agency to the Milpitas  
Redevelopment Agency, et alia versus John Chiang, et alia

Motion/Second:       Vive Mayor Polanski/Councilmember Gomez

Motion carried by a vote of:                   AYES: 4  
  NOES: 0  
  ABSENT 1 (Giordano)

**ADJOURNMENT**

Mayor/Chair Esteves adjourned the joint meeting of the Successor Agency to  
the former Redevelopment Agency, the Economic Development Corporation,  
and the Housing Authority Commission at 3:40 PM.

*Meeting minutes respectfully submitted by  
Mary Lavelle, City Clerk and Secretary,  
Successor Agency, EDC and Housing Commission*

**DRAFT**

**MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Special Meeting of Milpitas City Council  
**Date:** Thursday, July 3, 2014  
**Time:** 12:30 PM  
**Location:** Milpitas City Hall  
Committee Conference Room, 1<sup>st</sup> floor  
455 East Calaveras Blvd., Milpitas

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**ROLL CALL**

Mayor Esteves called the meeting to order at 12:31 p.m.

**PRESENT:** Mayor Esteves, Vice Mayor Polanski, Councilmembers Indihar Giordano and Montano

**ABSENT:** Councilmember Gomez

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted.

Motion/Second: Councilmember Indihar Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Gomez)

**PUBLIC FORUM**

None.

**ANNOUNCEMENT OF  
CONFLICT OF INTEREST**

City Attorney Ogaz asked the Mayor and Councilmembers if they had any personal conflicts of interest on today's agenda. Mayor Esteves announced he is a Santa Clara Valley Transportation Authority (VTA) Board Member and asked the City Attorney if this would be a conflict. City Attorney Ogaz replied it would not be a conflict in terms of acting on this item today.

**APPOINTMENT OF  
SPECIAL COUNSEL**

City Attorney Ogaz reviewed the recent action taken by VTA against the City. He stated the VTA sought a court order to force the City to issue an encroachment permit that would allow for a full closure of Dixon Landing Road for an eight month period. He added currently there is a partial closure of Dixon Landing Road. City Attorney Ogaz confirmed the judge denied the motion from VTA, and the City prevailed, but VTA may file an appeal. Because the appellant landscape requires more specialization, he thought it would be best handled by an outside firm. Additionally, he stated the City does not know if VTA is going to actually file an appeal, but if it does, staff recommends that Berliner Cohen handle the appeal process for the City. He said the City Attorney's budget could accommodate the cost and no appropriation of money is necessary. City Attorney Ogaz asked the Council to approve the staff recommendation to enter into a contract with Berliner Cohen to handle the appeal and for the contract not-to-exceed \$35,000.

Vice Mayor Polanski asked how long the VTA has to appeal. City Attorney Ogaz replied he believes they have 30 days to appeal.

Councilmember Indihar Giordano inquired if VTA files these types of lawsuits often. City Attorney Ogaz believed it was unprecedented in the BART construction. Councilmember Indihar Giordano was happy the City prevailed and would be in support of hiring special counsel.

City Manager Williams stated VTA indicated a full closure would not impact its overall construction schedule for the opening of the Montague Station. He added when this project went through the Environmental Impact Review, it was only cleared for a partial closure not a full closure.

Councilmember Montano asked why does VTA want the full closure and what are their compelling arguments. City Attorney Ogaz replied VTA's arguments are that full closure would allow pedestrian bicycle safety that cannot be addressed in the partial closure and the roadway width is insufficient, yet these issues were never addressed in the two years leading up to the partial closure. City Attorney Ogaz suspected the problem was lack of proper planning by VTA.

City Manager Williams noted even though the City prevailed in the lawsuit, staff is continuing to work with VTA to mitigate the traffic impacts.

Councilmember Montano stated she did not want full closure and concurs with staff's recommendation.

Mayor Esteves congratulated City staff on the outcome of the lawsuit, stated it was necessary to spend resources to defend the City, and supported staff's recommendation to hire outside counsel.

Vice Mayor Polanski asked how many businesses would be impacted by full closure.

City Manager Williams replied there are approximately 10 to 12 businesses in the immediate area, numerous businesses located on Milpitas Blvd., and also residents in the mobile home parks that would be affected by full closure.

Motion: to approve the appointment of Berliner Cohen as special litigation counsel, if the need arises, in the not-to-exceed amount of \$35,000.

Motion/Second: Councilmember Indihar Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Gomez)

## **ADJOURNMENT**

Mayor Esteves adjourned the meeting of the City Council at 1:10 p.m.

*Meeting minutes respectfully submitted by  
Kathy Ynegas, Deputy City Clerk*